

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Request for Review by Madison River	)	WC Docket No. 06-122
Communications, LLC of Decision of	)	
Universal Service Administrator	)	
	)	

**REQUEST FOR REVIEW**

Pursuant to Section 54.719(a) of the Rules,<sup>1</sup> Madison River Communications, LLC (“Madison River”)<sup>2</sup> hereby requests that the Federal Communications Commission (“FCC”) reverse an action of the Universal Service Administrative Corp. (“USAC”) entered into on October 14, 2008. To date, USAC and National Exchange Carrier Association (“NECA”) have sent three invoices to Madison River, concluding that Madison River owed universal service fund (“USF”) and Telecommunications Relay Service (“TRS”) fund contribution payments based on Internet access service and intrastate T-1 revenues received from customers during calendar year 2005.<sup>3</sup> Madison River had not reported the Internet access service revenues on FCC Form 499-A as telecommunications service revenues because these revenues were derived from non-assessable services. Internet access services are classified as information services under the Commission’s rules, which are not reportable as assessable services under Section

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<sup>1</sup> 47 C.F.R. § 54.719(a).

<sup>2</sup> Madison River Communications, LLC is a wholly owned, direct subsidiary of Madison River Communications Corp., which in turn is a wholly owned subsidiary of CenturyTel, Inc. Madison River was not transferred to CenturyTel until April 2007. Therefore, it was not part of CenturyTel during the time period covered by the audit.

<sup>3</sup> See note 16, *infra*, for a full explanation of disputed amounts in this appeal.

54.706 of the Commission's rules.<sup>4</sup> Madison River did not report the intrastate T-1 revenues as interstate telecommunications services because the customer ordered intrastate services and paid for them at the intrastate rate.

Madison River operates as a competitive local exchange carrier ("CLEC") and is separate from its sister telephone companies. It is not a "facilities-based provider" as that term was utilized in the *Computer II* rules. A "facilities-based provider" is limited to a carrier that "owns" its own facilities. Because Madison River purchases facilities from an underlying facilities-based carrier, in the form of UNEs, it cannot be treated as owning its own facilities under the *Computer II* rules. Therefore, its Internet access services did not contain separate telecommunications and information service components. Therefore, none of its Internet access services should be assessed for USF contributions. In addition, Madison River provided intrastate T-1 services to customers, who ordered the services between two points within a state, indicated to Madison River that they were for intrastate traffic, and paid for such services from Madison River's intrastate price list. They are therefore not interstate services and are not assessable under the universal service contribution rules. Madison River requests that the Commission promptly reverse the USAC decision with respect to these two issues, cancel the invoiced amounts, and credit Madison River's account for the erroneously assessed amounts.

## **I. BACKGROUND**

Madison River was operating as a CLEC in the North Carolina market during calendar year 2005. As such, it was a separate corporate entity from its sister telephone companies. Among other services, Madison River provided Internet access service to consumers. Such services included as part of the Internet access service a broadband connection so that the

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<sup>4</sup> 47 C.F.R. § 54.706.

consumer could communicate with the Internet through its Internet access service.<sup>5</sup> Madison River does not own its own facilities, but rather obtains the connection through the lease of unbundled network elements (“UNEs”) from an underlying facilities-based local exchange carrier.

Because Internet access services are classified as an information service under the Commission’s rules, the revenues in question were reported on Line 418 of the company’s FCC Form 499-A, which line is utilized to report “Revenues other than U.S. telecommunications revenues, including information services . . .”<sup>6</sup> Madison River also did not report revenues for intrastate T-1 services purchased by customers as interstate telecommunications revenues on Form 499-A. KPMG, LLP, which was hired by USAC to audit high cost universal service support beneficiaries, performed a routine audit of Madison River’s compliance with the USF contribution rules for the calendar year 2005. The Auditor’s Report, dated June 21, 2007, concluded that Madison River should have reported the transmission portion of the Internet access service separately as regulated telecommunications service revenues on line 406d of Form 499-A.<sup>7</sup> In support of this position, KPMG concluded that a CLEC should separately report DSL revenues as assessable telecommunications services based on a “consultation with USAC”,<sup>8</sup> although KPMG never analyzed the legal issues involved with drawing such a conclusion and Madison River does not know how this consultation occurred or what advice was imparted in

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<sup>5</sup> Madison River indicated that the connections involved were digital subscriber line (“DSL”)-based Internet services. Upon subsequent examination, CenturyTel has determined that these connections were through T-1 connections, not DSL. Notwithstanding, this factual difference is irrelevant to the legal analysis involved below, and therefore Madison River does not press that point at this time.

<sup>6</sup> FCC Form 499-A, at 6, Line 418 (2006)(applicable to 2005 revenues).

<sup>7</sup> KPMG, LLC, Independent Accountant’s Report, Attachment 1, at 3 (Jun. 21, 2007) (“Auditor’s Report”)(attached as Appendix A).

<sup>8</sup> *Id.* at 3.

that communication. Separately, but in the same Report, KPMG concluded that Madison River should report its intrastate T-1 revenues as interstate telecommunications services because it could not prove that the services were intrastate.<sup>9</sup>

On March 14, 2008, USAC accepted KPMG's recommendations and requested that Madison River file a revised Form 499-A to reflect the auditor's findings.<sup>10</sup> USAC concluded that Madison River, as a CLEC, was required to unbundle the transmission component of its DSL service "to ensure nondiscriminatory access to basic services."<sup>11</sup> It indicated that

for carriers that lacked market power this requirement meant that carriers that own common carrier transmission facilities and provide enhanced services must unbundle basic from enhanced services and offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service operations.<sup>12</sup>

USAC then concluded that, although the *Wireline Broadband Order*<sup>13</sup> changed the USF contribution requirements for some wireline broadband Internet access service offerings, such order was not effective at the time the revenues were earned in this instance.<sup>14</sup> USAC did not address the legal arguments on nonassessability that Madison River had presented to it and KPMG. USAC also concluded that, if the company could not provide documentation to prove that its intrastate private line services were used for interstate services less than 10 percent of the

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<sup>9</sup> *Id.* at 4. The Auditor's Report also raised additional issues which Madison River is not contesting.

<sup>10</sup> Universal Service Administrative Company Management, Memo, IPLA Audit-CO-2006-042, Filer No. 820646 (Mar. 14, 2008)("USAC Audit Memo")(attached as Appendix B).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* (quoting *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, 16 FCC Rcd 7418, ¶ 4 (2001)("CPE/Enhanced Services Deregulation Order")).

<sup>13</sup> *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, 20 FCC Rcd 14853 (2005)("Wireline Broadband Order").

<sup>14</sup> USAC Audit Memo at 2.

time, that it would treat such intrastate services as interstate.<sup>15</sup> USAC recomputed revenue calculations and figures on Madison River's Form 499-A and sent invoices for a portion of the additional USF and TRS contributions it claimed should have been sent. The total amount of assessments for both the USF and TRS fund are \$359,616.69.<sup>16</sup>

## **II. INTERNET ACCESS SERVICE IS AN INFORMATION SERVICE THAT IS NOT ASSESSABLE UNDER THE FCC'S RULES.**

It is undisputed that Internet access service is an information service that is not assessable under the FCC's USF contribution rules.<sup>17</sup> Line 418 of Form 499-A is unquestionably the correct line on which to report non-assessable information service revenues.<sup>18</sup>

## **III. MADISON RIVER WAS NEVER UNDER AN OBLIGATION TO UNBUNDLE THE TRANSMISSION COMPONENT OF ITS INTERNET ACCESS SERVICE.**

Madison River, as a CLEC, was never under an obligation to unbundle the transmission component of its Internet access service and offer it separately pursuant to tariff or otherwise. The unbundling requirement mentioned by USAC in its Audit Memo derives from none of the

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<sup>15</sup> *Id.* at 3.

<sup>16</sup> See USAC Invoice No. UBD10000326435 (Oct. 22, 2008) and Invoice No. UBD10000331420 (Nov. 21, 2008) (attached as Exhibits C and D), which invoiced amounts were based on DSL and intrastate T-1 service revenues totaling approximately \$3,754,699.00. The invoiced amounts represent two-thirds of the total back-billed amounts for USAC USF contributions. Madison River will receive one additional invoice that bills it for the remaining one-third of the assessments, which invoice is also appealed in this pleading. The total amount of USF assessments subject to this appeal is \$341,027.05. Also, see NECA Invoice No. TRS0064093 (Oct. 5, 2008) (attached as Exhibit E), which represents the back-billed amount from the TRS Fund based on the same DSL and intrastate T-1 service revenues totaling approximately \$3,754,699.00. The total TRS Fund assessments appealed in this pleading is \$18,589.64. Therefore, the total amount of assessments challenged in this appeal is \$359,616.69.

<sup>17</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, ¶ 33 (1998).

<sup>18</sup> See Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms, FCC Form 499-A, Line 418, at 29 (2006)(covering revenues received in 2005).

orders cited. Rather, the unbundling requirement was first adopted in the *Computer II* decision back in 1980, prior to the time that any CLEC even existed.<sup>19</sup> Even though *Computer II*'s structural separation requirement was eventually lifted, the unbundling requirement was maintained in *Computer III*. *Computer III* stated the requirement as follows: a “facilities-based carrier” that offered an enhanced service (now called an “information service”) was required to unbundle the transmission component of the enhanced service and to offer the transmission component pursuant to tariff and separately from the enhanced service offering.<sup>20</sup>

In *Computer III*, the FCC was concerned that bottleneck carriers could unfairly advantage their own enhanced services operations if they could simply bundle their enhanced services and transmission services together, and thereby deny access to the underlying transmission component to competitors. To avoid this result, the Commission ensured that competing enhanced services providers would have access pursuant to tariff to the underlying transmission component on the same nondiscriminatory basis as the facilities-based carrier provided to itself.<sup>21</sup> The FCC did not specifically define the term “facilities-based carrier” in *Computer II*. The *Computer II* unbundling requirement was thought to apply to all incumbent local exchange carriers (“ILECs”) and AT&T at the time it was adopted.<sup>22</sup> It is significant that the FCC only continued application of the unbundling rule to AT&T because it continued to possess “market

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<sup>19</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384, ¶ 231 (1980)(“*Computer II*”).

<sup>20</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, ¶¶ 158-59 (1986)(“*Computer III*”).

<sup>21</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I Reconsideration, 2 FCC Rcd 3035, ¶ 46 (1987)(“*Computer III Reconsideration*”).

<sup>22</sup> *Computer III* at ¶ 117. See also *Computer II* at ¶¶ 215-222.

power” over its own transmission facilities. The policy reason for this conclusion is clear from *Computer III* itself.<sup>23</sup>

The FCC has never concluded that a CLEC is a “facilities-based carrier” under the *Computer II* rules. There is every indication in subsequent orders, however, that the FCC would not have applied the unbundling rules to a CLEC that purchased UNEs had it been asked that question.

For instance, in 1997 the FCC’s *Hyperion Forbearance Order* permissively detariffed the interstate exchange access services offered by CLECs, which included the provision of DSL services.<sup>24</sup> After the effective date of that Order, CLECs were no longer required to tariff their interstate access services, subject to conditions not here relevant.<sup>25</sup> In the *Hyperion Forbearance Order*, the FCC did not even mention the *Computer II* tariffing obligation. If *Computer II*’s unbundling requirement had applied to CLECs, there would have been an inconsistency between *Computer II*’s unbundling and tariffing requirement, and the *Hyperion Forbearance Order*’s permissive detariffing conclusion. One would have expected that, if CLECs who purchased UNEs were considered facilities-based carriers for purposes of the unbundling rule (requiring them to offer transmission at tariffed rates), the impact of the permissive detariffing order would have resolved the apparent inconsistency between *Hyperion* and *Computer II*. The FCC has resolved other such inconsistencies concerning tariffing obligations in other contexts.<sup>26</sup>

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<sup>23</sup> *Computer III* at ¶¶ 46, 130.

<sup>24</sup> See *Hyperion Telecommunications, Inc. Petition Requesting Forbearance*, 12 FCC Rcd 8596 (1997) (“*Hyperion Forbearance Order*”).

<sup>25</sup> The FCC did require a CLEC to offer interstate switched access services at rates that mirrored the competing ILEC. *Access Charge Reform*, CC Docket No. 96-262, Seventh Report & Order, 16 FCC Rcd 9923, ¶¶ 52-54 (2001). However, these types of services are not relevant to this instant appeal.

<sup>26</sup> The FCC has adjusted its rules to recognize such detariffing in other contexts. See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s*

Therefore, the absence of any discussion of the tariffing portion of *Computer II*'s unbundling rule in the *Hyperion Forbearance Order* supports the conclusion that the FCC never applied the unbundling rule to UNE-based CLECs.

This conclusion is supported in other orders. For instance, in justifying the elimination of *Computer II*'s structural separation requirement applicable to the Bell Operating Companies ("BOCs"), the FCC has concluded that other nonstructural safeguards would protect consumers. It based this conclusion in part on the following:

There are other existing safeguards that are applicable to incumbent LECs that seek to bundle. There is no dispute in the record that the BOCs and all incumbent LECs are required to offer basic local exchange service on an unbundled, tariffed, nondiscriminatory basis. Indeed, there is no evidence in the record that these carriers are relieved of this obligation in any state in which they provide local exchange service. Customers would therefore be able to purchase enhanced services from competitive providers and still obtain local service from the incumbent pursuant to the tariff. This prevents the incumbent carriers from discriminating against customers who purchase enhanced service from competitive suppliers.<sup>27</sup>

Thus, the FCC's policy rationale was tied to the inability of information service providers to obtain access to basic services, something that does not apply to a UNE-based CLEC, who itself is forced to rely on the ILEC's services for its own end user service offerings.

The FCC reemphasized this conclusion in its *Report to Congress* when it concluded that "cable modem providers" had never been subject to the *Computer II* unbundling requirement. There the Commission stated: "With regard to the lines leased by Internet service providers to provide their own internal networks, the analysis is straightforward. We explain below that the

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*Local Exchange Area*, CC Docket No. 96-149, 12 FCC Rcd 15756, ¶ 164 (1997)(FCC modified its Competitive Carrier rule that required a LEC to offer basic services to itself pursuant to tariff, to also allow rates that are untariffed, but provided pursuant to interconnection agreement under Section 251).

<sup>27</sup> *CPE/Enhanced Services Deregulation Order* at ¶ 44.



Internet service providers leasing the lines do not provide telecommunications to their subscribers, and thus do not directly contribute to universal service mechanisms.”<sup>28</sup> It is the telecommunications service provider that leases the lines that is subject to USF contributions, not the non-facilities based Internet access provider.<sup>29</sup>

The fact that the definition of “facilities-based carriers” in *Computer II* was limited to ILECs and AT&T was also made clear in the *Cable Modem Declaratory Ruling*,<sup>30</sup> which relied on the crucial finding that *Computer II* unbundling had only been applied to the “traditional telephone networks.” As used in that Order, the term wireline broadband Internet access services only applied “to services provided over the infrastructure of traditional telephone networks.”<sup>31</sup> Although cable TV companies were clearly “facilities based” because they owned their own last-mile facilities and other network components, the FCC thought that they were under no unbundling requirement because they did not own facilities that were part of the “traditional telephone network.” In a similar vein, under no stretch of the imagination could “traditional telephone network” refer to a CLEC, providing competitive services based on UNEs, which only existed after the 1996 Act was enacted. Thus, these later orders also provide clear evidence of what the FCC has known all along—that *Computer II* unbundling does not apply to UNE-based CLECs.

Instead of focusing on the true aim of the *CPE/Enhanced Services Deregulation Order*, USAC plucked out one sentence from the Order to conclude that Madison River, as a

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<sup>28</sup> *Report to Congress* at ¶ 67.

<sup>29</sup> *Id.*

<sup>30</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, CS Docket No. 02-52, 17 FCC Rcd 4798, ¶ 43 (2002) (“*Cable Modem Declaratory Ruling*”), *vacated in part and remanded*, 345 F.3d 1120 (9th Cir. 2003), *rev’d (upholding FCC decision)*, *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967 (2005) (“*NCTA v. Brand X*”).

<sup>31</sup> *Id.* at ¶¶ 43 & n.169. *See also Wireline Broadband Order* at ¶ 31 & n. 92.

nondominant CLEC, was required to unbundle transmission from its Internet access service offering.<sup>32</sup> First of all, this Order does not even mention CLEC offerings of broadband Internet access services, nor does USAC point to any such reference. Second, this Order was not the source of the original unbundling rule, and did not purport to adopt any new rule, but was meant only to liberalize the rules that were already in place.<sup>33</sup> The original *Computer II* and *III* Orders that adopted the unbundling requirement, as indicated previously, would apply the requirement only to facilities-based carriers, not purchasers of UNEs.<sup>34</sup> Thus, USAC misuses the *CPE/Enhanced Services Deregulation Order*. In particular, the description in the Order concerning how a carrier should report USF assessable revenues based on bundles of telecommunications services and information services offerings was predicated solely on the fact that there were in fact separate offerings by the carrier in the first place.<sup>35</sup> Because there is no separate telecommunications service offered by a non-facilities based CLEC that provides Internet access service, there is no bundled information service/telecommunications service offering. Thus, no part of the Internet access service would be assessable under the USF contribution rules.

#### **IV. THE WIRELINE BROADBAND ORDER DID NOT ALTER THE LAW THAT EXISTED PRIOR TO ITS ENTRY.**

In 2005, the FCC determined that a wireline broadband Internet access service no longer should be viewed as containing separate transmission and basic service components.<sup>36</sup> Thus, the *Computer II* unbundling requirement was eliminated for DSL-based broadband Internet access

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<sup>32</sup> USAC Memo at 2.

<sup>33</sup> “The Commission has not changed [the unbundling requirement] for [non-dominant carriers].” *CPE/Enhanced Services Deregulation Order* at ¶ 4.

<sup>34</sup> See Section III, *supra*.

<sup>35</sup> See USAC Memo at 2 (citing *CPE/Enhanced Services Deregulation Order* at ¶¶ 50 and 51).

<sup>36</sup> *Wireline Broadband Order* at ¶ 41.

services operating above a specific speed of transmission.<sup>37</sup> The FCC concluded that such deregulatory action was necessary to promote the availability of broadband to consumers available from multiple platforms.<sup>38</sup> The FCC concluded that the tariffing of DSL service was not necessary to promote competition for broadband Internet access services.<sup>39</sup> It drew this conclusion primarily because there existed strong competition from other facilities-based providers, such as cable TV companies, and from other platforms such as those used by satellite and mobile carriers.<sup>40</sup>

Nowhere in the *Wireline Broadband Order* is there any intimation that a UNE-based CLEC providing broadband Internet access service was under a pre-existing obligation to offer the transmission component of its Internet access service separately from the information service. In fact, the FCC indicated: “In the past, the primary, if not sole, facilities-based platform available for the provision of “information services” to consumers was an incumbent local exchange carriers’ (incumbent ILEC’s) telephone network.”<sup>41</sup> The Order noted that the *Computer II* unbundling requirement has only been applied to “traditional wireline services and facilities to date.”<sup>42</sup> The FCC went on to specifically recognize that the provision of service through UNEs was separate from using a carrier’s “own facilities”: “Competitive LECs generally provide these services using their own facilities in combination with UNEs leased from

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<sup>37</sup> *Id.* at ¶ 5.

<sup>38</sup> *Id.* at ¶ 79.

<sup>39</sup> *Id.* at ¶ 90.

<sup>40</sup> *Id.* at ¶¶ 32-40.

<sup>41</sup> *Id.* at ¶ 3. The Supreme Court relied on this same fact in upholding the Commission’s refusal to unbundle cable modem offerings. *NCTA v. Brand X*, 545 U.S. at 1001 (quoting *Cable Modem Declaratory Ruling* at 4825, ¶ 44) (“The traditional reason for its *Computer II* common-carrier treatment of facilities-based carriers (including DSL carriers), as the Commission explained, was ‘that the *telephone network* [was] the primary, if not exclusive, means through which information service providers can gain access to their customers.’”).

<sup>42</sup> *Wireline Broadband Order* at ¶ 31.

incumbent LECs pursuant to section 251(c)(3) of the Act. Some competitive LECs, however, provide DSL services using their own facilities exclusively.”<sup>43</sup> In addition, given that the Commission also gave wireline broadband Internet access providers the option to offer the transmission component on a detariffed basis, that is further evidence that previously detariffed CLECs were never included in the *Computer II* unbundling requirement.<sup>44</sup> Because CLEC offerings had already been permissively detariffed in the *Hyperion Forbearance Order*, there was no further need to grant detariffing authority to them. The one-year transition to deregulated DSL transmission arrangements was based on the fact of ISP reliance on “the availability of currently tariffed, broadband Internet access transmission offerings.”<sup>45</sup> Again, for UNE-based CLECs, there was no reason for a transition because they had not provided DSL pursuant to tariff prior to *Wireline Broadband Order*. Therefore, the *Wireline Broadband Order* itself recognized that the unbundling requirement did not apply to UNE-based CLECs.

**V. IN ANY EVENT, THE FCC SHOULD ONLY APPLY THIS NEW INTERPRETATION OF COMPUTER II AND III TO GOVERN FUTURE FILINGS.**

Although the law is clear on the nonassessability of Internet access revenues of CLECs, if the FCC decides to uphold the USAC action here, it should only do so on a prospective basis. Given the analysis provided previously, CLECs could not fairly have been on notice that the law required them to report a portion of Internet access service revenues as an interstate telecommunications service. Therefore, any ruling here would be one of first impression and it

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<sup>43</sup> *Id.* at ¶ 54 (footnotes omitted).

<sup>44</sup> *Id.* at ¶ 89.

<sup>45</sup> *Id.* at ¶ 98 (footnote omitted).

would be unfair to apply it retroactively to all CLECs, including Madison River. The FCC has taken this approach with other accessibility rulings.<sup>46</sup>

**VI. INTRASTATE SERVICES ORDERED OUT OF THE INTRASTATE PRICE LIST CANNOT BE ASSESSED FOR CONTRIBUTION TO THE USF.**

Madison River customers ordered T-1 private line services, and through routine customer order procedures, it was determined that the customer was requesting service that was intrastate. These customers ordered services where the T-1 service was between two points within a state. Madison River installed these services between intrastate points. Madison River thus provided intrastate services to these customers and billed customers in accordance with the intrastate price list. Therefore, the services provided were by definition intrastate. USAC states that a private line service will be treated as interstate if a carrier cannot prove that the service is used primarily for intrastate services. This conclusion is incorrect.

Of course, intrastate communications services are not assessable for universal service purposes.<sup>47</sup> All carriers, ILECs and CLECs alike, provide services to customers based upon representations that customers make to company personnel about the use of such services and the location of the end points of such services. Although FCC rules require that companies retain documentation sufficient to show the accuracy of assessment amounts, there is no FCC rule that requires a company to obtain and keep written proof from an end user customer that a T-1 service is being used for intrastate traffic. Neither KPMG nor USAC identified any such rule. The only documentation held by Madison River (or any carrier for that matter) that services are intrastate are based on the books of account of the company that contain aggregate totals for such

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<sup>46</sup> See, e.g., *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, 23 FCC Rcd 10731, ¶ 24 (2008).

<sup>47</sup> 47 C.F.R. § 54.706(a).

intrastate services. USAC never asked for or evaluated Madison River's ordering and billing systems to determine whether they accurately track revenues for intrastate services. Nor has it raised any questions about whether Madison River misrepresented or manipulated the true nature of services. Therefore, it was illogical and erroneous for USAC to assume that intrastate services were in fact interstate services without specific documentation that does not exist nor has ever existed. If the FCC believes that such documentation should be created, it should specify such obligation in a rulemaking and identify what that written documentation should entail, but it should only be applicable to future assessments.<sup>48</sup>

USAC's finding has enormous implications for the operations of telecommunications carriers. Carriers provide services based on customer representations for a large number of intrastate services. No written documentation is required. This has been a long time practice in the industry. To date, all carriers have expected that intrastate revenues are not subject to USF and will not be overturned at the whim of an auditor. Therefore, Madison River respectfully requests that the Commission reverse the decision of USAC on this issue.

## **VII. CONCLUSION**

Given the foregoing analysis, USAC was incorrect that there is a separate "telecommunications service" component to a CLEC-provided information service that is based on the purchase of UNEs. The FCC was also incorrect that intrastate private line services must be treated as interstate services unless the carrier proves that the circuit was used for interstate services less than 10 percent of the time. Therefore, there is no assessable service that was

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<sup>48</sup> For instance, should the company obtain an affidavit from a customer about the intended usage of a circuit? Or should it ask for affidavits of how the circuits are actually used? During what time frames? Or should it conduct traffic studies on each customer circuit to determine customer usage? How frequent should those studies be? Although Madison River does not believe such documentation should be required, these questions show how the USAC documentation requirement is unknowable given the lack of FCC rules on the subject.

provided when Madison River provided customers broadband Internet access service or intrastate T-1 services. The USAC action should accordingly be reversed.

Respectfully submitted,

By: /s/ Gregory J. Vogt

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Of Counsel

Counsel for Madison River Communications LLC

December 12, 2008

### **Certificate of Service**

I, Gregory J. Vogt, do hereby certify that I have on this 12th day of December 2008 caused a copy of the foregoing "Petition for Review of Madison River Communications LLC." to be served by electronic mail or U.S. mail upon the following:

Scott Barash, Acting CEO  
Universal Service Administrative Corp.  
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/s/ Gregory J. Vogt  
Gregory J. Vogt



## Appendix A



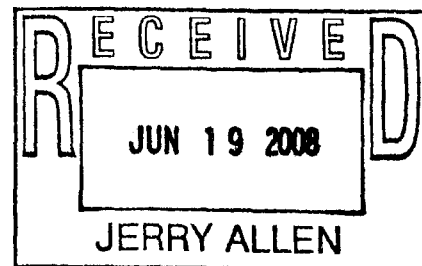
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## Independent Accountants' Report

Madison River Communications

Universal Service Administrative Company

Federal Communications Commission:



We have examined Madison River Communications', Filer ID No.820646 (the Company), compliance with applicable requirements of 47 C.F.R. Section 54.711 and 54.712 of the Federal Communications Commission's (FCC) Rules, Regulations and Related Orders and the Telecommunications Reporting Worksheet Instructions relative to information reported on the FCC Form 499-A for the year ended December 31, 2005. Management is responsible for the Company's compliance with those requirements. Our responsibility is to express an opinion on the Company's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards, issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about the Company's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Company's compliance with specified requirements.

Our examination disclosed material noncompliance with 47 C.F.R. Section 54.711 – Contributor reporting requirements applicable to the Company during the year ended December 31, 2005. Detailed information relative to the material noncompliance is described in items 820646-2005-01 through 820646-2005-06 in Attachment 1.

In our opinion, except for the material noncompliance described in the third paragraph, the Company complied, in all material respects, with the aforementioned requirements for the year ended December 31, 2005.

In accordance with Government Auditing Standards, we are required to report findings of deficiencies in internal control that are material to compliance with the aforementioned requirements. We performed our examination to express an opinion on whether the Company complied with the aforementioned requirements and not for the purpose of expressing an opinion on internal control over such compliance; accordingly, we express no such opinion. Our examination disclosed findings that are required to be reported under Government Auditing Standards and these findings, along with the views of management, are described in items 820646-2005-04 through 820646-2005-06 in Attachment 1.

This report is intended solely for the information and use of the Universal Service Administrative Company, the Federal Communications Commission and Madison River Communications and is not intended to be and should not be used by anyone other than these specified parties.

KPMG LLP

June 21, 2007

**Detailed Information Relative to Material Noncompliance (Finding)**  
**(Presented in accordance with requirements of Government Auditing Standards)**

<b>Finding No.</b>	820646-2005-01
<b>Condition</b>	During our examination of the Company, we noted that digital subscriber line (DSL) revenues of \$3,454,310 were reported on Line 418 of the Company's FCC Form 499-A related to 2005 instead of Line 406d.
<b>Criteria</b>	<p>The Instructions to the Telecommunications Reporting Worksheet (the Instructions) indicate that "Line 406 – local private line and special access service should include revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths."</p> <p>In the Wireline Broadband Notice of Proposed Rulemaking (NPRM), the FCC recognizes that under its existing rules and policies, telecommunications carriers providing DSL services are subject to universal service contribution requirements.</p>
<b>Cause</b>	The Company believes that the reporting of DSL revenues on Line 418 of their FCC Form 499-A is appropriate.
<b>Effect</b>	The Company overstated revenue on Line 418 of its FCC Form 499-A related to 2005 by \$3,454,310 with a corresponding understatement of revenues on Line 406d. Accordingly, the net universal contribution base was understated by \$3,454,310.
<b>Recommendation</b>	We recommend that the Company report DSL revenues as interstate revenue in line 406d in its future FCC Form 499-A filings.
<b>Company Response</b>	<p>Reporting by Madison River Communications ("Company") of its DSL information service revenue on Line 418 of its 2006 FCC Form 499-A (for the 2005 fiscal year) is proper and reporting of the revenue on Line 406 in Column (d) as interstate revenue included in the interstate revenue contribution base for universal service would be entirely inconsistent with the Commissions rules and policies respecting bundled end user retail information services provided by competitive local exchange carriers ("CLECs") or Internet Service Providers ("ISPs") on a non-tariffed basis.</p> <p>The Company's "DSL" revenue is not revenue from services offered under an interstate tariff as required for inclusion in the universal service contribution base for private line and special access revenues.<sup>1</sup> The Company is a CLEC and has never been under a duty</p>

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<sup>1</sup> See 2006 FCC Form 499 instructions at page 19. "Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed LNP surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges." See also page 22, instructions for Line 305 and Line 406. "Local private line and special access service should include revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths. Line 406 should include revenues from special access lines resold to end users unless the service is bundled with, and charged as part of a toll service, in which case the revenues should be reported on the appropriate toll service line. Report on Lines 305 and 406 revenues from offering dedicated capacity between specified points even if the service is provided over local area switched ATM or frame relay networks.

to file what the Federal Communications Commission ("FCC") now calls "wireline broadband Internet access transport" in an interstate access tariff. CLEC's are non-dominant carriers and are not subject to mandatory tariff filing requirements of any kind. Because a CLEC has never possessed, as have incumbent local exchange carriers ("ILECs"), a duty to make available the interstate transport component of its end user DSL offerings to other carriers on a common carrier basis, there has never been an obligation for CLECs to breakout an interstate access portion of their end-user DSL offerings. Absent an obligation to breakout the wireline broadband Internet access component of the end user retail DSL offering, there has never been a portion of the Company's retail DSL offering constituting a tariffed-interstate access service subject to inclusion in the interstate universal service contribution base.

The Company's retail DSL offering is an information service. Per the 2006 FCC Form 499 A instructions applicable to the 2005 fiscal year, such revenues should be reported on Line 418 as has been done by the Company. Even were it the case that the revenue should be reported on Line 406 as suggested by the audit finding, it is not includable in Column (d) as an interstate revenue because it was not billed pursuant to an interstate access tariff. While other interstate revenues, such as long distance, may not require tariffing with the FCC to be subject to inclusion in the contribution base, tariffing is required for assignment to the interstate column for private line and special access revenues reported on Line 406.

In the 2005 Wireline Broadband Order,<sup>2</sup> the FCC ruled "that wireline broadband Internet access service provided over a provider's own facilities is an information service." Specifically, the FCC ruled as follows:

Applying the definitions of "information service," "telecommunications," and "telecommunications service," we conclude that wireline broadband Internet access service provided over a provider's own facilities is appropriately classified as an information service because its providers offer a single, integrated service (i.e., Internet access) to end users. That is, like cable modem service (which is usually provided over the provider's own facilities), wireline broadband Internet access service combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications (e.g., e-mail, web pages, and newsgroups). These applications encompass the capability for "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications," and taken together constitute an information service as defined by the Act.<sup>3</sup>

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<sup>2</sup> See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, CC Docket No. 02-33, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), FCC 05-150 (Rel. Sept. 23, 2005), (*Wireline Broadband Order*).

<sup>3</sup> *Wireline Broadband Order at par. 14.*

The FCC made the references to “modem service” because of its need to align regulation of wireline broadband Internet access with cable modem service in order to create a level playing field. As part of that level playing field was the lifting of universal service contribution requirements for the deregulated, private-carriage offerings of ILECs subject to the FCC’s price cap regulation regime. In the earlier Cable Modem Declaratory Ruling, the FCC concluded that cable modem service combines “the transmission of data with computer processing, information provision, and computer interactivity, enabling end users to run a variety of applications,” and is therefore an information service.<sup>4</sup>

When the FCC undertook to create a level playing field for ILEC provision of bundled wireline broadband Internet access service in relation to cable modem services, and for that matter CLEC offerings of DSL transport to their ISP operation on a private carriage basis, the FCC eliminated the inclusion by ILECs of private-carriage wireline broadband Internet access transport service from the universal service contribution base on a going forward basis. Specifically, the FCC ruled as follows:

To the extent that a provider has discontinued providing that service as a common carrier service, it is not required to contribute to the universal service fund based on the revenues derived from providing that transmission service after the expiration of the 270 day contribution freeze period.<sup>5</sup>

Nowhere in the Wireline Broadband Order did the FCC address universal contribution by CLECs for DSL because CLECs have never provided such service on a “common carrier” basis subject to universal service contribution requirements. Rather, price cap ILECs have now been afforded the opportunity to do just as such CLECs have done in the past, to provide the wireline broadband Internet access transport component of their retail DSL service on a private-carriage basis not includable in the interstate universal service contribution base.

In conclusion, the Company’s retail DSL revenues for 2005 were not interstate common carriage access “DSL revenues” resulting from a tariffed offering subject to inclusion in Line 406, Column D of the 2006 FCC Form 499 for fiscal year 2005.

**KPMG Comment on Company Response** Based upon subsequent consultation with USAC, we believe that the Finding No. 820646-2005-01 is appropriate.

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<sup>4</sup> *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 125 S. Ct. 2688 (2005) (*NCTA v. Brand X*), *aff’g Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185 & CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (*Cable Modem Declaratory Ruling and NPRM*) at para. 38.

<sup>5</sup> *Wireline Broadband Order*, at para. 113.

<b>Finding No.</b>	<b>820646-2005-02</b>
<b>Condition</b>	The Company was unable to provide documentation to support its position that Madison's private line services were strictly intrastate and did not cross state borders.
<b>Criteria</b>	The Instructions indicate that "filers shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections and to allocate interstate revenues..."
<b>Cause</b>	The Company believes that its private line services do not cross state boundaries and that its reporting of private line revenues in FCC Form 499-A is appropriate.
<b>Effect</b>	Due to the lack of supporting documentation, we were unable to determine if any portion of the Company's private line revenues, totaling \$20,839, should have been reported as interstate revenues on Line 406 in the Company's FCC Form 499-A.
<b>Recommendation</b>	We recommend that the Company develop and maintain appropriate supporting documentation for private line revenues reported in future FCC Form 499-A filings.
<b>Company Response</b>	<p>Madison River Communications ("Company") disagrees with the Cause and Effect statements documented in this finding. The Company is aware of the rule associated with Private Line allocation to interstate if appropriate. The company provides point to point services within the state and files the private line in its intrastate tariffs and/or price list with the appropriate state public utilities commission.</p> <p>For private line, under the contamination doctrine an individual circuit is either all interstate or all intrastate. Moreover, unless an ILEC provisions a circuit across a state line, which the Company in no case does, the jurisdictional nature of the circuit is determined based on how the end user customer orders the circuit. The Company is also not certified as an Interstate carrier for private line services.</p> <p>Therefore with the reasons stated above, we believe that is enough information to support the reporting of our private line services as intrastate.</p>

<b>Finding No.</b>	<b>820646-2005-03</b>
<b>Condition</b>	During our examination of the Company, we noted that Local Number Portability (LNP) revenues of \$45,549 were reported in Line 418 of the Company's FCC Form 499-A related to 2005 instead of Line 404d.
<b>Criteria</b>	The Instructions require carriers to report LNP revenues in line 404d in Form 499-A.
<b>Cause</b>	The Company believes that it's reporting of LNP revenues Line 418 in the Company's FCC Form 499-A related to 2005 is appropriate.
<b>Effect</b>	The Company understated revenues in Line 404d of the Company's FCC Form 499-A related to 2005 by \$45,549 with a corresponding overstatement of revenues on Line 418. Further, the net universal service contribution base was understated by \$45,549.
<b>Recommendation</b>	We recommend that the Company report LNP revenues on Line 404d in future Form 499-A filings.
<b>Company Response</b>	<p>Madison River Communications reported the LNP charges on Line 418 because the 2<sup>nd</sup> paragraph of line 404 refers to federally tariffed LNP surcharges. Madison River Communications DOES NOT access federally tariffed LNP surcharges to its customers. We believe the LNP Recovery Charges are non regulated and contractual intrastate charges that should be categorized as revenue derived from telecommunications-related function but should not be included in the universal service or other fund contribution basis.</p> <p>We will begin reporting the LNP charges on line 404a however; we disagree with reporting any portion to the interstate revenue contribution basis in column d. Madison River Communications, LLC does not have a federally tariffed LNP surcharge. This charge is a non regulated fee being charged to the customer as part of their agreement with Madison River Communications as their CLEC provider.</p>

<b>Finding No.</b>	820646-2005-04
<b>Condition</b>	During our examination of the Company, we noted that Presubscribed Interexchange Carrier Charges (PICC) totaling \$182,855 were recorded on Line 417a instead of Line 414d in the Company's FCC Form 499-A filing related to 2005.
<b>Criteria</b>	The Instructions require carriers to report PICC pass-through charges in Line 414d on FCC Form 499-A.
<b>Cause</b>	The Company misinterpreted the aforementioned guidance and believed that the presentation of PICC pass-through charges on Line 417a was appropriate. The finding resulted from a lack of internal controls related to the preparation of the Company's FCC Form 499-A. This is considered a deficiency in internal controls over compliance with FCC rules and regulations.
<b>Effect</b>	The Company understated revenues reported on Line 414d by \$182,855 of its FCC form 499-A related to 2005 with a corresponding overstatement on Line 417a. This understatement has the effect of also understating the net universal service contribution base by \$182,855.
<b>Recommendation</b>	We recommend that the Company report PICC pass-through charges on Line 414d in future Form 499-A filings. We also recommend that the Company implement appropriate internal controls to prevent reporting errors in future periods.
<b>Company Response</b>	After review of the 499 instructions, we agree that PICC pass through charges should be on Line 414. However, we do not agree with the recommendation that the revenues should be reported in column (d) on line 414 since these are contractual and deregulated revenues. Also by reporting them on line 417a, we have not misstated the universal service contribution base revenues.

<b>Finding No.</b>	820646-2005-05
<b>Condition</b>	The Company did not separately report interstate and international revenues in columns (d) and (e) in its FCC Form 499-A related to 2005.
<b>Criteria</b>	The Instructions require that “filers should report their amount of total revenues that are interstate and international by using information from their books of account and other internal data reporting systems. Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in column (d) and (e), respectively. If interstate and international revenues cannot be determined directly from corporate books of accounts or subsidiary records, filers may provide on the Worksheet good faith estimates of these figures.”
<b>Cause</b>	The Company did not have sufficient systems, processes and internal controls to accurately capture and separately report international revenues in its FCC Form 499-A. The lack of internal controls in this area was driven, in part, by the Company’s realization that this reporting deficiency would not impact its net universal service contribution base.
<b>Effect</b>	Revenues in Blocks 3 and 4 in the Company’s FCC Form 499-A related to 2005 were not filed in accordance with the Instructions. There was no impact on the net universal contribution service base as a result of this error.
<b>Recommendation</b>	We recommend that the Company separately report interstate and international revenues in future Form 499-A filings. We also recommend that the Company implement appropriate internal controls to prevent reporting errors in future periods.
<b>Company Response</b>	Going forward, Madison River has a reliable source for reporting of International revenues separate from Interstate revenues for toll services. No universal contribution base was impacted as all revenues Interstate/Intl were reported under Interstate base for calculation purposes.



<b>Finding No.</b>	<b>820646-2005-06</b>
<b>Condition</b>	The Company reported Late Payment Charges of \$746 on Line 307 and \$44,987 on Line 408 in the Company's FCC Form 499-A related to 2005 rather than reporting such amounts on Line 418.
<b>Criteria</b>	The Instructions indicate that "Line 418 should include late payment charges and charges (penalties) imposed by the Company for customer checks returned for non-payment."
<b>Cause</b>	The Company did not identify this reporting requirement during the preparation of its FCC Form 499-A related to 2005. The finding resulted from a lack of internal controls related to the preparation of the Company's FCC Form 499-A. This is considered a deficiency in internal controls over compliance with FCC rules and regulations.
<b>Effect</b>	Revenues on Lines 307 and 408 in the Company's FCC Form 499-A related to 2005 were overstated by \$746 and \$44,987, respectively, and as a result, Line 418 was understated by \$45,730. There was no impact on the net universal service contribution base as a result of this finding.
<b>Recommendation</b>	We recommend that the Company report late payment charges and penalties in Line 418 in future Form 499-A filings. We also recommend that the Company implement appropriate internal controls to prevent reporting errors in future periods.
<b>Company Response</b>	Going forward, Madison River Communications LLC will report late payment charges on Line 418a. By reporting information on Lines 307 and 408, we have not misstated the universal service contribution base revenues.

## Appendix B



Universal Service Administrative Company

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**Date:** March 14, 2008

**Subject:** IPIA (Improper Payment Improvement Act) Audit – CO-2006-042

**Filer ID:** 820646

USAC management has reviewed the IPIA Audit of the 2006 FCC Form 499-A for filer id 820646 Madison River Communications, LLC response to the audit is as follows

**Finding No.** 820646-2005-01

### Financial Management

**Response:** USAC Financial Operations Management has reviewed and based on the FCC Form 499A instructions and FCC orders identified below USAC Management agrees with this finding.

On October 30, 1998 the FCC released the memorandum opinion and order FCC 98-292 concerning GTE ADSL service. In the order the FCC stated that GTE's DSL solution was an interstate access service.<sup>1</sup>

In the order the FCC presents the following points.

- DSL service is a special access service and thus subject to federal regulation under the "ten percent" rule.<sup>2</sup> The Commission found that special access lines carrying more than *de minimis* amounts of interstate traffic to private line systems should be assigned to the interstate jurisdiction. Interstate traffic is deemed *de minimis* when it amounts to ten percent or less of the total traffic on a special access line.<sup>3</sup>
- More than a *de minimis* amount of the internet traffic carried across DSL circuits is destined for websites in other states or

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<sup>1</sup> FCC 98-292, Sec. IV Ordering Clauses para. 33 "Accordingly, IT IS ORDERED, pursuant to Section 204(b) of the Communications Act of 1934, 47 U.S.C. § 204(b), that GTOC Transmittal No. 1148, proposing to offer GTE DSL Solutions-ADSL Service, is an interstate access service subject to this Commission's jurisdiction."

<sup>2</sup> FCC 98-292, Sec. IV Ordering Clauses para. 24

<sup>3</sup> See 47 C.F.R. 36.145(a)

other countries, even though it may not be possible to ascertain the destination of any particular transmission.<sup>4</sup>

The FCC Report and Order 98-292 was followed on March 30, 2001 with the released the FCC Report and Order 01-98. In the order the Commission clarified their enhanced services unbundling requirements to ensure nondiscriminatory access to basic services. For carriers that lacked market power this requirement meant that carriers that own common carrier transmission facilities and provide enhanced services must unbundle basic from enhanced services and offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service operations.”<sup>5</sup>

FCC Order 01-98 also suggests two specific methods that carriers may use to determine their universal service obligations of bundled services.

- First, contributors may elect to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services.<sup>6</sup>
- Alternatively, contributors may elect to treat all bundled revenues as telecommunications service revenue for purposes of determining their universal service obligations.<sup>7</sup>

USAC agrees with the Company in that the release of the FCC Report and Order 05-150 on September 23, 2005 the FCC does change the universal service obligation of wireline broadband internet services and depending upon certain criteria laid out in the order. USAC agrees that certain providers of wireline broadband are no longer required to contribute on their broadband services, but as pointed out in the Company's response the FCC mandated that facilities-based providers of wireline broadband Internet access services must continue to contribute to existing universal service support mechanisms based on the current level of reported revenue for the transmission component of their wireline broadband Internet access services for a 270-day period after the effective date of this Order.<sup>8</sup> The 270 day period outlined in the order did not expire until well into 2006 and outside the 2005 reporting period subject to this audit.

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<sup>4</sup> FCC 98-292, para 26

<sup>5</sup> FCC 01-98, para 4

<sup>6</sup> FCC 01-98, para 50

<sup>7</sup> FCC 01-98, para 51

<sup>8</sup> FCC 05-150, para 113

Line	As Reported			Per Audit			Estimated Effect on Contribution Base
	Total Revenue	Interstate Revenue	International Revenue	Total Revenue	Interstate Revenue	International Revenue	
406	20,389.00	-	-	3,474,699.00	3,454,310.00	-	3,454,310.00
418	4,345,095.00			890,785.00			
Total Estimated Effect on Contribution Base							\$3,454,310.00

**Finding No.** 820646-2005-02

**Financial Management**

**Response:** USAC Financial Operations Management has reviewed and agrees with this finding. The jurisdictional nature of private line circuit is defined for FCC Form 499 reporting purposes based upon the type of traffic running across the circuit and not based upon the physical A&Z locations. If over ten percent of the traffic carried over a private line is interstate, then the revenues and costs generated by the entire line are classified as interstate.<sup>9</sup>

As identified in this finding the company did not provide proper documentation in support of reporting their private line circuits as 100% intrastate. USAC officially request that the Company provide the supporting documentation that all the private line circuits identified in this finding carry less than a de minimis amount of interstate traffic. Until the provides the requested documentation USAC will conservatively estimate that Company's private line circuits do carry more than a de minimis amount of interstate traffic and \$20,839 identified in this finding should be reported as 100% interstate.

The results presented in the table below represent the combined results of findings 820646-2005-01 and 820646-2005-02

Line	As Reported			Per Audit			Estimated Effect on Contribution Base
	Total Revenue	Interstate Revenue	International Revenue	Total Revenue	Interstate Revenue	International Revenue	
406	20,389.00	-	-	3,474,699.00	3,474,699.00	-	3,474,699.00
Total Estimated Effect on Contribution Base							\$3,474,699.00

**Finding No.** 820646-2005-03

**Financial Management**

**Response:** USAC Financial Operations Management has reviewed and agrees with this finding. The 2006 FCC Form 499A instructions are quite clear as it pertains to surcharges. Surcharges on telecommunications services are to be included in gross revenues and reported with the other revenues on

<sup>9</sup> See 47 C.F.R. 36.145(a)

which the surcharges were levied.<sup>10</sup> The FCC Form 499A instruction details further specific instructions concerning LNP surcharges stating that federally tariffed LNP surcharges should be identified as interstate revenues<sup>11</sup> and reported on line 404.<sup>12</sup> The Company represents in their response that the LNP surcharges are not federally tariffed and thus should not be reported as interstate revenues. USAC request that the company submit supporting documentation showing that the revenues from their LNP surcharges are not for the recovery of the FCC LNP fund. Until USAC receives the requested documentation USAC agrees with this finding that the LNP revenues identified in this finding should be reported as 100% interstate on line 404.

The results presented in the table below represent the combined results of findings 820646-2005-01 and 820646-2005-03.

Line	As Reported			Per Audit			Estimated Effect on Contribution Base
	Total Revenue	Interstate Revenue	International Revenue	Total Revenue	Interstate Revenue	International Revenue	
404.1	12,722.00	3,229.00	-	58,271.00	48,778.00	-	45,549.00
418	4,345,095.00			845,236.00			
Total Estimated Effect on Contribution Base							\$ 45,549.00

Finding No. 820646-2005-04

**Financial Management  
Response:**

USAC Financial Operations Management has reviewed and agrees with this finding. The primary interexchange carrier charge (PICC) is a FCC regulated charge that long distance companies pay to local telephone companies to recover part of the costs of providing the "local loop". The charge is designed to assist local phone companies cover their costs for connecting long distance calls to and from a customers residence to the long distance carrier of their choice. By nature this charge is interstate and should be reported accordingly on line 414.

<sup>10</sup> 2006 FCC Form 499A Instructions, Section III.C.2 – "Gross revenues also should include any surcharges on telecommunications services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be shown separately on Line 403. Other surcharges treated as revenues should be included in the revenue categories on which the surcharges were levied."

<sup>11</sup> 2006 FCC Form 499A Instructions, Section III.C.3 – "federally tariffed LNP surcharges, should be identified as interstate revenues."

<sup>12</sup> 2006 FCC Form 499A Instructions, Section III.C.4.Line 303 and Line 404.

[illegible]

**Finding No.** 820646-2005-05

## Financial Management

**Response:** USAC Financial Operations Management has reviewed and agrees with this finding with no further comment or question.

**Finding No.** 820646-2005-06

## Financial Management

**Response:** USAC Financial Operations Management has reviewed and agrees with this finding with no further comment or question.

The results presented in the table below represent the combined results of findings 820646-2005-01, 820646-2005-02, and 820646-2005-06

[illegible]

## Summary

The following provides a summary of the above mentioned audit findings and the monetary effects on the Carrier's estimated additional contribution.

Line	As Reported			Per Audit			Estimated Effect on Contribution Base
	Total Revenue	Interstate Revenue	International Revenue	Total Revenue	Interstate Revenue	International Revenue	
304.1	480,658.00	154,307.00	-	480,658.00	154,307.00	-	
307	746.00	746.00	-	-	-	-	
403	627.00	-	-	627.00	-	-	-
404.1	12,722.00	3,229.00	-	58,271.00	48,778.00	-	45,549.00
404.2	3,982,983.00	-	-	3,982,983.00	-	-	-
405	803,926.00	-	-	803,926.00	-	-	-
406	20,389.00	-	-	3,474,699.00	3,474,699.00	-	3,474,699.00
408	165,364.00	-	-	120,377.00	-	-	-
414	996,245.00	585,990.00	-	1,179,100.00	768,845.00	-	182,855.00
417	186,755.00	-	-	3,900.00	-	-	-
418	4,345,095.00			890,969.00			
419	10,995,510.00	744,272.00	-	10,995,510.00	4,446,629.00	-	
420	6,169,011.00	589,219.00	-	9,623,883.00	4,292,322.00	-	
421	67,453.00	6,104.00	-	67,453.00	6,104.00	-	
422	62,112.00	5,932.00	-	62,112.00	5,932.00	-	-
423	6,106,899.00	583,287.00	-	9,561,771.00	4,286,390.00	-	3,703,103.00
<b>Total Estimated Effect on Contribution Base</b>							<b>\$3,703,103.00</b>

The following table provides an estimation of the carrier's net additional contribution due to the Fund. This is only an estimation and may not reflect the actual amounts invoiced by USAC Financial Operations.

Form Year	Estimated Effect on Contribution Base	Contribution %	Circularity Factor	Estimated Additional USF Contribution
2006	3,703,103	10.60%	9.73%	354,335.85
<b>Estimated Additional USF Due</b>				<b>\$ 354,335.85</b>

The total effect of this audit will result in an increase of \$3,703,103 in the Company's contribution base as compared to the Company's originally filed 2006 FCC Form 499-A. This increase in contribution base will result in an additional contribution obligation of \$354,335.85 for the filing year 2006.

Due to the revenue data error reported on Company's 2006 499A form, USAC officially requests Company to file a revised 2006 499A filing to correct the all issues in the above mentioned findings. <sup>13</sup>

<sup>13</sup> 2006 499A Instructions, II.E Obligation to File Revision "A filer must submit a revised Worksheet if it discovers an error in the revenue data that it reports."



Statement Date: 10/22/2008  
 Invoice Number: UBDI0000326435  
 Filer 499 ID: 820646  
 Balance Due USAC: \$ 125,471.93  
 Amount Enclosed:

## Mail Payment To:

Madison River Communications, LLC  
 Attention: Donnie Aultman  
 100 CenturyTel Dr.,  
 Monroe, LA, 71203

Universal Service Administrative Company  
 1259 Paysphere Circle  
 Chicago, IL 60674

Address Change? See reverse side for instructions.

☐ If paying for multiple Filer 499 IDs, please check here and complete form on back.

Send top portion of statement with payment in enclosed envelope. Keep bottom portion for your records.

## STATEMENT OF ACCOUNT

Date	Description	Charges	Credits
	<b>Previous Balance</b>	<b>\$15,423.44</b>	
10/06/2008	Payment		(\$15,423.44)
10/15/2008	High Cost Support Mechanism Credit - 2006 499A		(\$724.38)
10/15/2008	Schools & Libraries Support Mechanism Credit - 2006 499A		(\$379.44)
10/15/2008	Low Income Support Mechanism Credit - 2006 499A		(\$140.94)
10/15/2008	Rural Health Care Support Mechanism Credit - 2006 499A		(\$6.86)
10/15/2008	Rural Health Care Support Mechanism Charges	\$117.77	
10/15/2008	Low Income Support Mechanism Charges	\$449.78	
10/15/2008	Rural Health Care Support Mechanism Adjustment - 2006 499A	\$670.87	
10/15/2008	Schools & Libraries Support Mechanism Charges	\$1,240.37	
10/15/2008	High Cost Support Mechanism Charges	\$2,516.03	
10/15/2008	Low Income Support Mechanism Adjustment - 2006 499A	\$13,782.93	
10/15/2008	Schools & Libraries Support Mechanism Adjustment - 2006 499A	\$37,106.91	

Transactions occurring after 10/15/2008 are not reflected on this statement.

Under the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (DCIA), your BALANCE DUE is a demand that you pay a DEBT owed to the United States on or before the DUE DATE. If the DUE DATE is non-business day, payment must be received the business day before that date. Any portion of the DEBT unpaid after the DUE DATE is a DELINQUENT DEBT, which may result in sanctions, including interest, penalties, and administrative charges. Failure to file a Telecommunications Worksheet may result in a late filing fee DEBT added to your BALANCE DUE. Read the reverse of this Invoice for important information about those sanctions and your legal rights and obligations.

Statement Date	Invoice Number	Filer 499 ID	Balance Due USAC
10/22/2008	UBDI0000326435	820646	\$ 125,471.93

## FORM 499Q DATA

## PAYMENT INFORMATION

This month's support mechanism charges were calculated using an FCC contribution factor of 0.114000 and the following revenue data:

## August 2008 499Q

120b \$127,175.00  
 120c \$0.00

If the figures do not correspond with your records, please contact the 499 Data Collection Agent.

Payment must be received by 11/14/2008 to avoid late payment charges.

Please remit ACH payments in a CCD+ format to ABA #071000039, Account #5590045653.

All Wire Transfers should be sent to ABA #026009593, DDA (or Account) #5590045653.

Payments must include your Company Name, Filer 499 ID, and Invoice Number to ensure timely posting.





Statement Date: 10/22/2008  
Invoice Number: UBDI0000326435  
Filer 499 ID: 820646

STATEMENT OF ACCOUNT CON'T

10/15/2008	High Cost Support Mechanism Adjustment - 2006 499A		\$70,838.89	
	BALANCE DUE USAC BY 11/14/2008		\$125,471.93	



S 837-840



Statement Date: 11/21/2008  
 Invoice Number: UBDI0000331420  
 Filer 499 ID: 820646  
 Balance Due USAC: \$ 125,471.93  
 Amount Enclosed:

**Mail Payment To:**

Madison River Communications, LLC  
 Attention: Donnie Aultman  
 100 CenturyTel Dr.,  
 Monroe, LA, 71203

Universal Service Administrative Company  
 1259 Paysphere Circle  
 Chicago, IL 60674

Address Change? See reverse side for instructions.

☐ If paying for multiple Filer 499 IDs, please check here and complete form on back.

Send top portion of statement with payment in enclosed envelope. Keep bottom portion for your records.

**STATEMENT OF ACCOUNT**

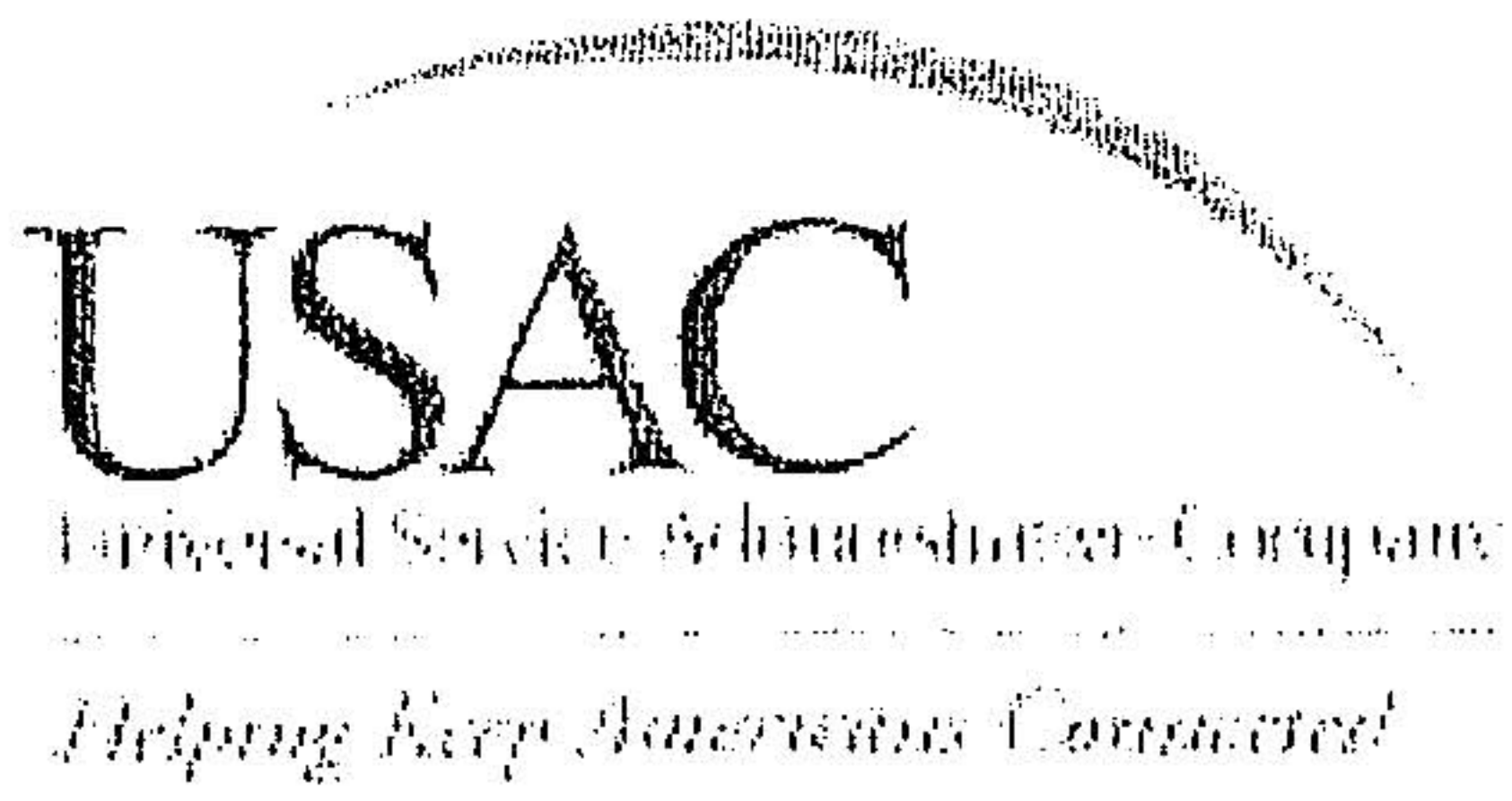
Date	Description	Charges	Credits
	<b>Previous Balance</b>	<b>\$125,471.93</b>	
11/12/2008	Payment		(\$125,471.93)
11/14/2008	High Cost Support Mechanism Credit - 2006 499A		(\$724.38)
11/14/2008	Schools & Libraries Support Mechanism Credit - 2006 499A		(\$379.44)
11/14/2008	Low Income Support Mechanism Credit - 2006 499A		(\$140.94)
11/14/2008	Rural Health Care Support Mechanism Credit - 2006 499A		(\$6.86)
11/14/2008	Rural Health Care Support Mechanism Charges	\$117.77	
11/14/2008	Low Income Support Mechanism Charges	\$449.78	
11/14/2008	Rural Health Care Support Mechanism Adjustment - 2006 499A	\$670.87	
11/14/2008	Schools & Libraries Support Mechanism Charges	\$1,240.37	
11/14/2008	High Cost Support Mechanism Charges	\$2,516.03	
11/14/2008	Low Income Support Mechanism Adjustment - 2006 499A	\$13,782.93	
11/14/2008	Schools & Libraries Support Mechanism Adjustment - 2006 499A	\$37,106.91	

Transactions occurring after 11/14/2008 are not reflected on this statement.

Under the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (DCIA), your BALANCE DUE is a demand that you pay a DEBT owed to the United States on or before the DUE DATE. If the DUE DATE is non-business day, payment must be received the business day before that date. Any portion of the DEBT unpaid after the DUE DATE is a DELINQUENT DEBT, which may result in sanctions, including interest, penalties, and administrative charges. Failure to file a Telecommunications Worksheet may result in a late filing fee DEBT added to your BALANCE DUE. Read the reverse of this Invoice for important information about those sanctions and your legal rights and obligations.

Statement Date	Invoice Number	Filer 499 ID	Balance Due USAC
11/21/2008	UBDI0000331420	820646	\$ 125,471.93
<b>FORM 499Q DATA</b>		<b>PAYMENT INFORMATION</b>	
This month's support mechanism charges were calculated using an FCC contribution factor of 0.114000 and the following revenue data:		Payment must be received by 12/15/2008 to avoid late payment charges.	
<u>August 2008 499Q</u>		Please remit ACH payments in a CCD+ format to ABA #071000039, Account #5590045653.	
120b	\$127,175.00	All Wire Transfers should be sent to ABA #026009593, DDA (or Account) #5590045653.	
120c	\$0.00	Payments must include your Company Name, Filer 499 ID, and Invoice Number to ensure timely posting.	
If the figures do not correspond with your records, please contact the 499 Data Collection Agent.			





Statement Date: 11/21/2008  
Invoice Number: UBDI0000331420  
Filer 499 ID: 820646

STATEMENT OF ACCOUNT CON'T

11/14/2008	High Cost Support Mechanism Adjustment - 2006 499A		\$70,838.89		
BALANCE DUE USAC BY 12/15/2008			\$125,471.93		



# INVOICE

Invoice: TRS0064093  
 Invoice Date: October 05, 2008  
 Page: 1 of 1

Bill To:

Please Remit To:

INTERSTATE TRS FUND  
 P.O. BOX 360090  
 PITTSBURGH PA 15251-6090

Madison River Communications, LLC  
 Donnie Aultman  
 100 CenturyTel Dr.  
 Monroe LA 71203

Customer No: 820646  
 Payment Terms: 22 DAYS  
 Due Date: October 27, 2008

AMOUNT DUE: 19,811.60 USD

Please return this portion with  
 your payment:

Enter Amount Remitted Above

## INTERSTATE TELECOMMUNICATIONS RELAY SERVICE FUND

Keep this portion for your records:

Customer No: 820646  
 Invoice: TRS0064093  
 Invoice Date: 10/5/2008

For billing questions, please call: 973-884-8073

Line	Description	Unit Amt	Net Amount
1	2006 Adjustment	19,811.60	19,811.60
Subtotal:			19,811.60
AMOUNT DUE:			19,811.60 USD